Supreme Court, U.S.
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NO. _____

IN THE
SUPREME COURT OF THE UNITED
STATES

RONNY IMMANUEL JAO, ET AL
PETITIONERS,

VS.

ERIC H. HOLDER, JR., ATTORNEY GENERAL

ON PETITION FOR A WRIT OF
CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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THE QUESTIONS PRESENTED FOR REVIEW

1. Whether the incidents happened to Petitioners in Indonesia, on account of their Chinese ethnicity and Christian belief, rise to the level of past persecution, and therefore, they are eligible for asylum?

2. Whether Petitioners are members of "disfavored group" in Indonesia, and therefore, they met their burden of showing that they have a well-founded fear of returning to Indonesia to be eligible for asylum?

CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT

The undersigned counsel of record for Petitioner, in compliance with Rule 14(b) and rule 29.6 of the Rules of the Supreme Court of the United States, certifies the following listed person and parties have an interest in the outcome of this case:

1. US Court of Appeals for the Ninth Circuit, Respondent
2. Eric H. Holder, Jr., U.S. Attorney General, Respondent
3. Peter D. Keisler, Attorney for Respondent
4. Ernesto H. Molina, Attorney for Respondent
5. James M. Dowd, Attorney for Respondent
6. The Board of Immigration Appeals
7. Polly A. Webber, Immigration Judge
8. Cindy S. Chang, Attorney for Petitioner
9. Ronny Immanuel Jao, Petitioner
10. Lily Immanuel Euw Jong, Petitioner
11. Samuel Jao, Petitioner
12. Hana Immanuel Jao, Petitioner

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STATEMENT OF JURISDICTION

On March 31, 2009, the US Court of Appeals for the Ninth Circuit denied the Petitioner's petition for panel rehearing. This Court's jurisdiction to grant the review on a writ of certiorari is discretional. The judicial discretion is warranted here because there are legal questions of exceptional importance involved in this case.

CONSTITUTIONAL PROVISIONS, STATUTES, AND REGULATIONS

1. 8 C.F.R. Section 208.13(b)(1)(i)

STATEMENT OF THE CASE

This is an immigration case. Petitioners are family members, which consists of father, the lead petitioner, mother, and two children. They are natives and citizens of Indonesia with Chinese ethnicity and Christian belief. Petitioners petition for a writ of certiorari on the decision rendered by the US Court of Appeals for the Ninth Circuit on March 31, 2009.

Petitioners were admitted to the United States on June 11, 1999 as nonimmigrant visitors with authorization to remain until December 10, 1999. Petitioners overstayed their visas and were placed in removal proceedings.

As Chinese Christian Indonesians, Petitioners had suffered persecution in Indonesia on account of their ethnicity and religion. They applied for relief from removal to Indonesia in the form of asylum, withholding of removal under Immigration and Nationality Act and under the Convention against Torture.

On May 20, 2003, the Immigration Judge ("IJ") issued a written decision denying petitioners' application for asylum and withholding of removal. Petitioners, through their former counsel, appealed to the Board of Immigration Appeals ("BIA").

On March 29, 2004, BIA affirmed, without opinion, the IJ's decision.

Through their former counsel, Petitioners filed a timely Petition for Review to the US Court of Appeals for the Ninth Circuit Court.

The Ninth Circuit Court denied that petition on November 28, 2008. Petitioners then filed a Petition for Panel Rehearing. Unfortunately that petition was denied on March 31, 2009.

ARGUMENT

A. Petitioners are eligible for the relief in the form of asylum because the experiences they had endured in Indonesia on account of their Chinese ethnicity and Christian religion amount to the level of persecution.

In Singh v. INS, 94 F.3d 1353, 1358 (9th Cir.

1996) the Court found "Persecution may be found by cumulative, specific instance of violence and harassment toward an individual and her family members not only by the government, but also by a group the government declines to control." (Citing Shirazi-Parsa v. INS, 14 F.3d 1424, 1428 (9th Cir. 1994)) The 9th Circuit Court in Singh also found "Discrimination, harassment, and violence by groups the government is unwilling or unable to control can also constitute persecution." Id. at 1539 (citing Arteaga v. INS, 836 F.2d 1227, 1231 (9th Cir. 1988)) Furthermore, the Court in Sangha v. INS, 103 F.3d 1482, 1487 (9th Cir. 1997) found "A single isolated incident may not "rise to the level of persecution, [but] the cumulative effect of several incidents may constitute persecution.

In this case, Petitioners were repeatedly harassed, discriminated, and attacked by the native Indonesians. Petitioners suffered violent attacks targeted at them just because they are Chinese Christians. Cumulatively, the experiences suffered by Petitioners in their home country compel the conclusion that they had suffered past persecution.

Further, the suffering inflicted on Petitioners because they are Chinese Christians were not simply a "minor disadvantage or trivial inconvenience." See Kovac v. INS, 407 F.2d 102, 107 (9th Cir. 1969). It amounted to "the infliction of suffering or harm upon one who suffers in race, religion, or political opinion in a way regarded as offensive." Accordingly, Petitioners are entitled to a regulatory presumption that they have a well-founded fear of future persecution because they established they suffered past persecution. See Singh v. INS, 94 F.3d at 1360-

61. Also, 8 C.F.R. S 208.13(b)(1)(i) states: "A finding of past persecution triggers a regulatory presumption that the applicant has a well-founded fear of future persecution, which provisionally established the applicant's refugee status and eligibility for asylum."

B. Petitioners are eligible for the relief in the form of asylum because they are members of "disfavored group" in Indonesia, and they have proved that they have a well-founded fear of future persecution by demonstrating a "comparatively low" level of individualized risk.

In Sael v. Ashcroft, the Ninth Circuit Court held that: "Given Indonesia's history of anti-Chinese violence and official discrimination, we hold that Sael's evidence compels the conclusion that Indonesia's ethnic Chinese minority is at least a Disfavored group" The Court further held that: "certain individuals with [Sael's] characteristics-Christian of Chinese ethnicity-could have a well-founded fear of persecution in Indonesia."

Petitioners testified credibly at their asylum-hearing bout various incidents of discrimination, harassment and threats to their safety.

The lead petitioner, Ronny, testified that the native Indonesians persecuted him in Indonesia because of his Chinese ethnicity and his Christian religion since he was young. A.R. 97-98. In 1996, about five native Indonesians

came to his home and asked him for money. When he refused, the natives pushed him and tried to punch him. The natives shouted: "You Chinese" and "you dog" while throwing stones at his house and pushing at the front door. Ronny was hit in the leg with a stone. A.R. 98-100. Ronny had to pay the police to make a report about this incident, but the police never investigated it. A.R. 100-102

In May of 1997, because he was not able to give them money, a group of native Indonesians attacked Ronny. They hit him, pulled off his eyeglasses and called him a "Chinese dog" and a "pig". A.R. 103-105. Again, Ronny had to pay the authority to make a report but no follow up afterwards. A.R. 103, 105.

During the May 1998 riots, Ronny's car was damaged while he tried to drive home. Stones smashed the rear window of the car. A.R.115. Although Ronny's house was not burned; it was severe damaged by rock throwing at his windows and roof tiles. Id.

Hana, Ronny's minor daughter, testified that she was approached and assaulted or "sexually violated" in Indonesia a numerous times because of her Chinese ethnicity. A.R. 145. When asked how she feels about returning to Indonesia, Hana stated: "I would rather die than go back to Indonesia and get raped, and then killed miserably." A.R. 146.

The past experiences petitioners had suffered with anti-Chinese threats and violence support a "specific inference of personal danger." See Hartooni v. INS, 21 F.3d 336, 341 (9th Cir.

1994); also, in Hoxha, 319 F.3d at 1181, 1184, the Court held that the petitioner demonstrated a "particularized risk" of persecution on account of his Albanian ethnicity with evidence that he was harassed and threatened, attacked on one occasion by a group of anti-Albanian Serbs."

As in Hartooni and Hoxha, Petitioners' past experiences establish a sufficient personal connection to the general persecution directed against ethnicity Chinese in Indonesia. Therefore, Petitioners are eligible for the relief in the form of asylum because they have a well-founded fear of returning to Indonesia on account of their Chinese ethnicity and Christian religion.

CONCLUSION

Based on the foregoing reasons, Petitioners respectfully request this Petition for a Writ of Certiorari be granted.

Dated: June 24, 2009 Respectfully Submitted,

By: /S/

Cindy S. Chang, Esq.
Attorney for Petitioners,
Ronny Immanuel Jao, et al.

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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED
MAR 31 2009
MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

RONNY IMMANUEL JAO;
LILYIMMANUEL EUW JONG;
SAMUEL JAO;
HANA IMMANUEL JAO,

Petitioners,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 04-72039 Agency Nos. A077-852-078

A077-852-079

A077-852-080

A077-852-081

ORDER

Before: ALARCON , LEAVY, and TALLMAN, Circuit Judges.

The petition for panel rehearing is denied.

APPENDIX A

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED
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MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

RONNY IMMANUEL JAO;
LILY IMMANUEL EUW JONG;
SAMUEL JAO;
HANA IMMANUEL JAO,

Petitioners,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 04-72039

Agency Nos. A077-852-078

A077-852-079

A077-852-080

A077-852-081

MEMORANDUM *

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

APPENDIX B

On Petition for Review of an Order of the Board of Immigration Appeals

Submitted November 24, 2008**

Before: ALARCON, LEAVY, and TALLMAN, Circuit Judges.

Ronny Immanuel Jao, his wife and two adult children, all natives and citizens of Indonesia, petition for review of the Board of Immigration Appeals' order summarily affirming an immigration judge's ("IJ") decision denying their application for asylum and withholding of removal. We have jurisdiction under 8 U.S.C. § 1252. We review for substantial evidence, INS v. Elias-Zacarias, 502 U.S. 478, 481 n.1 (1992), and we deny the petition.

Substantial evidence supports the IJ's finding that petitioners did not establish past persecution because the Indonesian government was willing and able to protect Jao from the native Indonesians who beat him twice after attempting to extort money from him. See Nahrvani v. Gonzales, 399 F.3d 1148, 1154 (9th Cir. 2005). Substantial evidence also supports the IJ's conclusion that petitioners did not establish past persecution, because the sexual harassment endured by Hana Jao was not persecution, see Nagoulko v. INS, 333 F.3d 1012, 1016-17 (9th Cir. 2003), and because the vandalism to petitioners' house and car during the May 1998 riots also did not constitute persecution, see Rostomian v. INS, 210 F.3d 1088, 1089 (9th Cir. 2000) (concluding that acts

** The panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

Of random violence during periods of significant strife are insufficient to establish past persecution).

In addition, substantial evidence supports the IJ's conclusion that petitioners failed to demonstrate a well founded fear of persecution because, even as members of a disfavored group in Indonesia, petitioners have not demonstrated an individualized risk of persecution. Cf. Sael v. Ashcroft, 386 F.3d 922,927-29 (9th Cir. 2004). Further, the record does not compel the conclusion that petitioners demonstrated a pattern and practice of persecution against similarly situated individuals in Indonesia. See Lolong v. Gonzales, 484 F.3d 1173, 1180-81 (9th Cir. 2007) (en banc). Accordingly, petitioners' asylum claim fails.

Because petitioners did not establish eligibility for asylum, it necessarily follows that they did not satisfy the more stringent standard for withholding of removal. See Zehatye v. Gonzales, 453 F.3d 1182, 1190 (9th Cir. 2006).

PETITION FOR REVIEW DENIED.

U.S. Department of Justice
Executive Office for Immigration Review

Decision of the Board of Immigration Appeals
Falls Church, Virginia 22041

File: A77-852-078 - SAN FRANCISCO Date:

In re: JAO, RONNY IMMANUEL MAR 29 2004

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Glaser, John S., Esquire

ON BEHALF OF DHS: Stephen Johnston, Assistant District Counsel

ORDER:

PER CURIAM. The Board affirms, without opinion, the results of the decision below. The decision below is, therefore, the final agency determination. See 8 C.F.R. § 1003. 1 (e)(4).

FOR THE BOARD

APPENDIX C

U.S. Department of Justice
Executive Office for Immigration Review

Decision of the Board of Immigration Appeals
Falls Church, Virginia 22041

File: A77-852-079 - SAN FRANCISCO Date:

In re: JAO, SAMUEL MAR 29 2004

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Glaser, John S., Esquire

ON BEHALF OF DHS: Stephen Johnston, Assistant District Counsel

ORDER:

PER CURIAM. The Board affirms, without opinion, the results of the decision below. The decision below is, therefore, the final agency determination. See 8 C.F.R. § 1003.1(e)(4).

FOR THE BOARD

U.S. Department of Justice
Executive Office for Immigration Review

Decision of the Board of Immigration Appeals
Falls Church, Virginia 22041

File: A77-852-080 - SAN FRANCISCO Date:

In re: JAO, HANA IMMANUEL MAR 29 2004

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Glaser, John S., Esquire

ON BEHALF OF DHS: Stephen Johnston, Assistant District Counsel

ORDER:

PER CURIAM. The Board affirms, without opinion, the results of the decision below. The decision below is, therefore, the final agency determination. See 8 C.F.R. § 1003.1(e)(4).

FOR THE BOARD

U.S. Department of Justice
Executive Office for Immigration Review

Decision of the Board of Immigration Appeals
Falls Church, Virginia 22041

File: A77-852-081 - SAN FRANCISCO Date:

In re: EUW JONG, LILY IMMANUEL MAR 29 2004

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Glaser, John S., Esquire

ON BEHALF OF DHS: Stephen Johnston, Assistant District Counsel

ORDER:

PER CURIAM. The Board affirms, without opinion, the results of the decision below. The decision below is, therefore, the final agency determination. See 8 C.F.R. § 1 003. 1 (e)(4).

FOR THE BOARD

IMMIGRATION COURT
550 KEARNY ST, SUITE 800
SAN FRANCISCO, CA 94108

In the matter of Case No.: A71-822-770

Ronny, Samuel, Hana Jao, Lily Euw Jong
Respondent

IN REMOVAL PROCEEDINGS

ORDER OF THE IIMMIGRATION JUDGE

This is a summary of the oral decision entered on 4-9-03.
This memorandum is solely for the convenience of the parties. If the proceedings should be appealed or reopened, the oral decision will become the official opinion in the case.

[x] The respondents were ordered removed from the United States to Indonesia

[ ] Respondent application for voluntary departure was denied and respondent was ordered removed to _____ Or in the alternative to _____

[ ] Respondent application for voluntary departure was granted until _____ upon posting a bond in the amount of $ _____ with an alternative order of removal to _____

[x] Respondent's application for asylum was ( ) granted (x) denied ( ) withdrawn ( ) other.

[x] Respondent's application for witholding of removal was ( ) granted (x) denied ( ) withdrawn ( ) other.

APPENDIX D

[ ] Respondent's application for cancellation of removal under section 240A (a) was ( ) granted ( ) denied ( ) withdrawn ( ) other.

[ ] Respondent's application for cancellation of removal under section 240A (b) was ( ) granted ( ) denied ( ) withdrawn ( ) other. If granted, it is ordered that the respondent be issued all appropriated documents necessary to give effect to this order

[ ] Respondent's application for a waiver under section _____ of the INA was ( ) granted ( ) denied ( ) withdrawn ( ) other

[ ] Respondent's application for Adjustment of status under section _____ was ( ) granted ( ) denied ( ) withdrawn. If granted it is ordered that the respondent be issued all appropriated documents necessary to give effect to this order.

[ ] Respondent's status was rescinded under Section 246 of the INA.

[ ] Respondent is admitted to the United States as a _____ until _____.

[ ] As a condition of admission, respondent is to Post a $ _____ bond.

[ ] Respondent knowingly filed a frivolous asylum application after proper notice.

[ ] Respondent was advised of the limitation on discretionary relief for failure to appear as ordered in the Immigration judge's oral decision.

[ ] Proceedings were terminated.

[x] Other: CAT claim was denied

Appeal Reserved (Checked)/ Waived by: A (circled) / I / B

Appeal Due by: 5 - 9 - 2003

Date: 4 -9 - 2003

_____

Polly A. Webber
Immigration Judge

CERTIFICATE OF SERVICE

THIS DOCUMENT WAS SERVED BY: MAIL (X)
PERSONAL SERVICE ( )
TO: [ ] ALIEN [ ] ALIEN c/o Custodial officer [x]
ALIEN'S ATTY/REP [X] INS
DATE: 4-10-03 BY: COURT STAFF ____

ATTACHMENTS: [ ] EOIR-33 [ ] EOIR-28 [ ]

Legal Services List [ ] Other

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION
REVIEW IMMIGRATION COURT
San Francisco, California

File Nos.: A 77 852 078
A 77 852 079
A 77 852 080
A 77 852 081

April 9, 2003

In the Matters of

RONNIE EMMANUEL JAO,
SAMUEL JAO,
HANA EMMANUEL JAO and
LILLY EMMANUEL EUW JONG,

Respondents

IN REMOVAL PROCEEDINGS

CHARGE: Section 231(a) (1) (B) overstay of non-immigrant status.

APPLICATIONS: Asylum, withholding of removal, and relief under Article 3 of the Convention Against Torture.

ON BEHALF OF RESPONDENTS:
David A. Diaz, Esquire
485 Pacific Avenue
San Francisco, California 94133

APPENDIX E

ON BEHALF OF SERVICE:
Stephen A. Johnston
Assistant District Counsel
550 Kearny Street, Ste. 1000 San Francisco,
California 94108

ORAL DECISION OF THE IMMIGRATION JUDGE

The respondents are respectively a 42-year-old married male, a 13-year-old minor unmarried male, an 18-year-old unmarried minor female, and a 43-year-old married female. These are members of a family. They are all natives and citizens of Indonesia.

At a hearing before this Court on August 1, 2000, counsel on respondents'-behalf admitted the factual allegations in the Notices to Appear, conceded removability but declined to designate a country of return, in any case if return should be required. The Court thereupon directed that Indonesia should be the country of return in all four cases.

Respondents wished to proceed with the application for asylum, withholding of removal and relief under Article 3 of the Convention Against Torture, with the lead respondent being the applicant and including the rest of the family members in his application. Based upon the admissions of the respondents, the Court finds that removability has been demonstrated by clear and convincing evidence as required by Section 240(c) of the Act.

The exhibits of the record of proceedings, other than the Notices to Appear, include Exhibit 2, the asylum application; 2A a copy of respondent's birth record; 2B a partial copy of respondent's passport; 2C a copy of the marriage certificate between the two adult respondents; 20 a set of background documents

submitted to the asylum office. Exhibit 3 a letter from respondent relating to conditions in Indonesia and the asylum office interview. Exhibit 4 another set of background documents presented to the Court at one of the master calendar hearings. Exhibit 5, a set of background documents submitted by counsel on April 4, 2003. Exhibit 6-1, a declaration of the lead respondent. Exhibit 6-2, a declaration of the minor respondent, Hana, who's file number ends in 080. Exhibit 7, the 2002 Human Rights Practices Report for Indonesia.

At the hearing which was held today, April 9, 2003, the lead respondent testified to the statutory requirements for relief from removal as described above. The minor 18-year-old respondent also testified to numerous incidents occurring to her that further underscored the family's desire not to return to Indonesia.

STATEMENT OF THE LAW

In order to establish eligibility for asylum, a respondent must show that he suffered past persecution and or has a well-founded fear of future persecution on account of one or more of the five grounds enumerated in Section 208(a) of the Immigration and Nationality Act as amended. Those being race, religion, nationality, membership in a particular social group, or political opinion.

Persecution means the infliction of harm or suffering upon those who differ in a way regarded as offensive. Sangha v. INS, 103 F.3d 1482 at 1487 (9th Cir. 1997). A finding of past persecution gives rise to a presumption of future persecution. 8 C.F.R. Section 208.13. The Service may rebut the presumption by showingX1 preponderance of the evidence the

existence of a fundamental change in circumstances or the reasonable availability of internal relocation. id at sub Section (b) (1) (i) .

To establish a well-founded fear of future persecution, an individual must demonstrate both a subjectively genuine and an objectively reasonable fear. INS v. Cardoza-Fonseca, 480 U.S. 421 (1987). The subjective component is satisfied by the individual presenting credible testimony that he genuinely fears persecution. Duarte De Guinac v. INS, 179 F.3d 1156 (9th Cir. 1999).

The objective component can be established either by showing past persecution as discussed above, or to show a good reason to fear future persecution by providing credible, direct and specific evidence in the record of facts that would support a reasonable fear of persecution. id at page 1159. Said another way, if a reasonable person in similar circumstances would fear persecution upon return to the native country, the standard is satisfied. Matter of Mogharrabi, 19 I&N Dec. 439 (BIA 1987). In Artiaga v. INS, 836 F.2d 1227 at 1233 (9th Cir. 1988), the 9th Circuit held that even a 10 percent chance of persecution might satisfy the well-founded fear requirement.

Past persecution = a well-founded fear of future persecution standing alone, is insufficient to satisfy the requirements for asylum. Elias-Zacarias v. INS, 502 u.S. 478 (1992). Finally, even if an individual proves himself to be a refugee eligible for asylum, the decision to grant asylum is left to the discretion of the Attorney General. See Duarte De Guinac, supra.

FINDINGS OF FACT

In arriving in a decision in this case, this Court has carefully observed the respondent' demeanor while each has testified. In addition, the Court has carefully analyzed each respondent's testimony for consistency, detail and specificity as well as persuasiveness. The Court has weighed each respondent's demeanor and testimony against the standard set forth in 9th Circuit and Board of Immigration Appeals precedent.

The credibility of the respondents is not in dispute. Indeed the Service has not questioned either respondent's credibility. Thus, the Court hereby adopts respondents' testimony as it's findings of fact.

To summarize, the lead respondent indicates that he grew up in Indonesia as the son of Chinese parents. Respondent indicates that all his life he has been exposed to discrimination in Indonesia because of his Chinese ethnicity. For the most part throughout his life, he reflects that he had to endure constant demands by native Indonesian people for money. The respondent indicated that such demands would happen to him at a frequency of at least once a week. He indicated that he generally gave the money when it was requested, because he was afraid not to.

The respondent described two incidents, one in September of 1996 and one in May 1997, when he did not provide money when asked or demanded. On the first occasion, he was in his home and a man actually came and knocked on his door at night time. The respondent asked him to come back another time, and when he did so, he claims this man started to attack him; pushing him and punching him. He indicates there were other men a short distance away who then joined in the fight, and that other people

farther away came into range and began throwing stones. A neighbor, who was a native Indonesian, acted as a mediator and resolved the problem.

However, as everyone was leaving, the crowd again began throwing stones and agitating. Eventually a police officer arrived and broke up the crowd. The respondent indicates that during the melee, he was called ethnic slurs relating to his Chinese ethnicity and his house was attacked with rocks. The respondent also indicates one rock hit him in the leg and scratched him. The respondent says that the police took him and the man who had started the brawl to the police station, and took reports. The respondent indicates that only he had to pay at the end of the report filing, and they were sent away. The respondent says nothing ever came of his complaint.

In May of 1997, he indicates he was visiting his brother and getting back into his car, when he was approached by an individual ethnic Indonesian demanding money. According to the respondent, he had no money at the time and said that he could therefore not comply. According to the respondent he was getting into the car when the man started beating on the car and throwing rocks, and when he tried to calm the man down by getting
out of the car to talk to him, he was beaten, and that other Indonesians joined and bruised him, took his glasses and began to throw rocks.

According to the respondent an army patrol approached and disbursed the attackers. The respondent then says he was taken to an army post to make a report, and that one of the attackers was also brought. Once again, the respondent says he alone had to pay for the report to be taken and then was sent on his way. The respondent indicated that

he paid the fee because he was afraid that if he did not, the military would make things worse for him. The respondent says there was never any follow up to this report either.

During the May 1998 riots, respondent indicated that he was out doing some deliveries and on his way home, fell into the riots and witnessed a number of Chinese people being pulled from their cars, their cars being torched or overturned, and being beaten up. The respondent says his car was damaged by a number of rocks that were thrown at him. There were dents and scratches and his rear window smashed. Nonetheless, respondent thanks God that he was able to return home unscathed and that his home was located in a compound behind an iron gate, which he said was too difficult for the native Indonesians to penetrate.

According to respondent, windows were broken in their home with rocks, and roof tiles were also broken by the demonstrators, and that the family remained indoors for several
days hoping that nothing worse would happen. Although everyone expected the compound to be attacked on the third day of the riots, evidently they were bypassed with only a few rocks being thrown at them that day.

When respondents finally ventured out of their home several days later, they found graffiti indicating that Chinese should be killed or beaten and found widespread damage. The lead respondent estimated the damage to be about 10,000 United States dollars to his compound. He claims after that, he had to close his business because people were afraid to do business with him, and that it took him over a year to close out the business and sell his equipment.

During that time thereafter, the respondent indicates people continued to demand money from him at a rate of about twice a month. The respondent obtained visas for himself and his family members in February of 1998. It was his intention at that time to bring the family to the United States on vacation. However, after the riots, they decided to move to the United States, but first to sell the business and their home and plan a proper departure. The respondent indicates he does not wish his family to go through the same things that he had to endure in his life in Indonesia.

The lead respondent testified that his mother is still living and that she is living in Sulawesi, which is where this respondent and his family originated. The respondent has five brothers and one sister who are all living in that part of the country, all with functioning businesses. The respondent says they are at a level where they are barely able to support themselves, but that their businesses have not been destroyed. Following the respondents trip to the United States, the older brother of the lead respondent was beaten up during an extortion attempt in his car, in approximately January of 2000. This is the only other threatening situation that he has described.

The respondent was asked why he did not go to Sulawesi in 1999 instead of leaving the country all together, and he indicated that he was concerned about the inter-religious problems going on there, and especially with the rise of Muslim dominance throughout the country and particularly in that region. The respondent did not testify at any length about religion, but indicated in his declaration that about nine months after the May 1998 riots, the windows in his Christian church were broken and

the church down the street was burnt to the ground. The respondent believes that as a Chinese Christian and with his Chinese Christian family members, they will all face persecution upon returning to Indonesia; first of all because of the volatile bad feelings that native Indonesians hold for Chinese, and secondly because of the Muslim hostility towards Christians at this point in time.

The respondent's passport also reflects two previous visits to the United States and a visit to Australia over the past number of years. The respondent readily agreed that he had made these trips, albeit by himself, and that he is a somewhat privileged member of society in Indonesia for having the financial capability of making such travel. The respondent's printing business employed six people and supported his family, and enabled him to buy a home which housed them all and supported one servant. The respondent readily agreed that he was better off than most ethnic Indonesians, though he was clear to categorize himself as not wealthy.

The minor female respondent testified that she had endured several offensive encounters with ethnic Indonesian men, who touched her in private parts in an offensive manner and called her names that she believed were directed at her ethnicity as well as her gender. While this respondent never required medical attention for the indignities that she suffered, she was at such a young age, the first time being when she was approximately 10 or 11, that she has obtained counseling to help her put those incidents behind her.

She was believably traumatized by these events and stated that she would rather die than return to Indonesia. This young respondent is very afraid that she will be raped or killed if she returns

to Indonesia. While she felt that the assaults that she endured were criminal, she did not report them to the police because she was very ashamed. She indicated that most of her friends are Chinese Indonesian and most of them have suffered these kinds of incidents. She also indicated that she has a native Indonesian friend who spoke up for her successfully when the neighbors of that friend insulted her. This respondent indicated that it might be true that native Indonesian girls would be mistreated by the older men, but that she felt that these girls could obtain protection from the police, whereas she did not believe the police would protect her in the slightest.

While the respondent did not describe the incident regarding her friend Santi, her declaration which she swore to, indicated that her friend was raped by five Indonesian men and assaulted in such a way that she was hospitalized and died some hours later. The Court believes it is this type of incident that this respondent believes awaits her if she is to return to Indonesia.

The Country Reports for Indonesia reflect that there is a great deal of animosity in the country for indigenous minorities as well as the Chinese ethnic minority. It further reflects that about 97 percent of the country is Muslim, and the rest distributed among Buddhist, Christian and other religions. There has been a great deal of upheaval in Indonesia, which has been analyzed as economically based. There have been a number of political changes and while the whole world has experienced upheaval since the 2001 attack on the World Trade Center in New York City, there has been an upsurge in anti-American sentiment and religious fervor in Indonesia which observers describe as an increase in

Islamic activism.

It is these instabilities ongoing in Indonesia that concern these respondents, as well as what I believe is very well documented in the background papers that there is a history of institutionalized discrimination against Chinese in Indonesia; some of which is evolving into a more democratic and less prejudicial situation since the internationally publicized atrocities that occurred in the May 1998 riots.

ANALYSIS AND FINDINGS OF LAW

As the two respondents who testified produced credible testimony, the Court accepts that they have a subjective fear of return to Indonesia. As to the objective fear, the first question is whether the circumstances amount to past persecution. While the Court is extremely sympathetic with the situation described by the respondents, it must conclude that the events in their past do not rise to the level of past persecution.

None of the respondents has been harmed seriously. The offensive assaults against the minor female respondent, the stoning of the lead respondent and his car during the riots and of the family compound during the riots are reprehensible, but in this Court's view, do not rise above the generalized lawlessness and manifestations of hostility occurring at the time. Indeed, the predicament of these respondents was not "appreciably different from the dangers faced by (their) fellow citizens". See Kotasz v. INS, 31 F.3d 847 and 852 (9th Cir. 1994).

In order to establish a well-founded fear, a petitioner "cannot simply prove that there exists a

generalized or random possibility of persecution he must show that he is at particular risk - that his predicament is appreciably different from the dangers faced by his fellow citizens". Singh v. INS, 134 F.3rd 962 at 967 (9th Cir. 199B). A petitioner must "establish that the mistreatment he suffered was directed personally toward him and that it was substantially more grievous in kind or degree than the general manifestation of hostility between the competing ethnic and religious groups" in the home country. "Mere generalized lawlessness and violence between diverse populations of the sort which abounds in numerous countries and inflicts misery upon millions of innocent people daily around the world, generally is not sufficient to permit the Attorney General to grant asylum to everyone who wishes to improve his or her life by moving to the United States without an immigrant visa." Id.

Indeed, the 9th Circuit has stated that "persecution is an extreme concept that does not include every sort of treatment our society regards as offensive". id, citing Ghaly v. INS, 58 F.3d 1425 at 1431 (9th Cir. 1995). For example, "discrimination on the basis of race or religion as morally reprehensible as it may be, does not ordinarily amount to 'persecution' "id".

In deciding which cases involve discrimination rising to the level of persecution, the 9th Circuit identifies the issues of looking at the cumulative effect of all the claimed incidents suffered. See Surita v. INS, 95 F.3d 814 at 819 (9th Cir.1996). "This inquiry is heavily fact-dependent, and is perhaps best answered by comparing the facts of petitione/s case with those of similar cases." Singh, supra at pages 967 to 968.

In cases involving alleged past persecution of

this genre, the 9th Circuit has found discrimination rising to the level of persecution where government forces have beaten, detained, degraded, or threatened a respondent; where the respondent has lost employment based on a protected ground; where a respondent was threatened credibly with grave bodily harm or was robbed repeatedly; where the clear indication is that the police have not provided protection. Surita, supra and Prasad v. INS, 101 F.3d 614 (9th Cir. 1996). Conversely, the 9th Circuit has not found a compelling case for persecution where the treatment complained of was far less severe. Singh, supra and Kamla Prasad v. INS, 47 F.3d 336 (9th Cir. 1995).

In this case, the male respondent endured rather constant demands to give money to people less fortunate to himself, which apparently were all ethnic Indonesians. On two occasions, the demands got physical and the police and military came to the respondent's rescue. While apparently there was no prosecution of the wrongdoers, the police did not idly stand by and allow the respondent to suffer severe physical injury. Thus, although the authorities were apparently somewhat corrupt as described by respondent, it cannot be said that they withheld protection from him.

The Court attempted to solicit a more definitive description of the respondent of why he thought the police *did* not protect or might harm him *if* he didn't pay the fees, but unfortunately he was not able to provide any dire consequences to himself or anyone else other than the apparent corrupt desire on the part of the authorities to cash in on ones misfortune. This cannot be said to rise to the level of persecution. Apparently, police have provided protection and therefore these circumstances do not

appear to rise to the level of persecution.

With respect to the May 1998 riots, the Court finds the actions taken against the various sectors of Indonesia reprehensible, although it does not appear that these respondents were singled out or that their risk of their circumstances was any different from fellow citizens of a similar economic class. While the Court recognizes that the ethnic slurs and the deep seeded resentment against the Chinese Indonesian comunity for it!s generally more monied position in society there, it does not appear that that is enough to rise to the level of persecution.

The Court recognizes that the respondents were in a great deal of fear during the time that the riots occurred and rocks were being thrown at their home, but their home was essentially left alone and while the lead respondent indicates that his business did not do well after the riots because people were afraid to do business with him, his business itself was not burned, trashed, looted, or destroyed directly by any persecutor. I recognize that persecution and the harm visited on (indiscernible) of persecution does not need to be physical, that harm can take on other forms. But given the parameters of the 9th Circuit decisions, the Court has to conclude that the treatment these respondents have complained of, was far less severe than the treatment experienced by respondents in the successful 9th Circuit cases cited above.

Thus, the Court must conclude that the circumstances described herein do not rise to the level of past persecution. One must turn then to the question of whether there is a well- founded fear of future persecution based upon what has gone before and the current conditions in Indonesia.

Indeed, in cases where past persecution cannot

be shown, the prior acts of discriminatory treatment "are sufficiently probative of a singling out of the petitioner so that an established current pattern of persecution of members of the group to which he belongs, carries the personalized threat of his future persecution" (Avetova-Elisseva v. INS, 1-213 F.3rd 1192 at 1201 (9th Cir. 2000» a claim of future persecution is possible. The Court must determine where the likelihood of more severe treatment will be in the future. Certainly, when the current Country Conditions indicate a pattern and practice of persecution against a targeted group, the Court could find *per* se persecution.

In Mgoian v. INS, 184 F.3d 1029 at 1035 (9th Cir. 1999), the 9th Circuit states that "the applicant is not required to show that she would be singled out individually for persecution if there is a pattern and practice, or persecution of groups of persons similarly situated, and she can establish her own inclusion in the group such that her fear of persecution upon return is reasonable. Thus, if (an applicant) is able to show a 'pattern or practice' of persecution against a group of which she is a member, then she will be eligible for asylum". However, it appears that with evidence of anything less than such a pattern and practice, the possibility of future persecution may well be speculative.

Once again, the Mgoian, supra Court stated at 184 F.3rd at 1035 note 4 "if the applicant is a member of a disfavored group, but the group is not subject to systematic persecution, this Court will look to: 1) the risk level of membership in the group (i.e. the extent and the severity of persecution suffered by the group), and 2) the alien's individual risk level (*i.e.* whether the alien has a special role in the group or is more likely to come to the attention of the

persecutors, making him a more likely target for persecution). A relationship between these two factors is co-relational; that is to say the more serious and widespread the threat of persecution to the group, less individualized the threat of persecution needs to be" (Mgoian, supra as cited in Avatova-Elesseva, supra).

In this case, our question is whether the lead respondent or the lead respondent and his family members are members of a group, and that there is an established current pattern of persecution of members of that group that would carry a personalized threat of persecution to these respondents with it. The country conditions as described in the documents in this record, in this Court's view, do not describe a pattern and practice of persecution against either ethnic Chinese or Christians. ThUS, the likelihood of persecution would not fit the "per sen category.

While there are definitely problems in Indonesia between various ethnic groups and various religious groups, the standard of finding a pattern and practice is so (indiscernible) a standard that the Court would have to see a great deal more evidence of such, than this respondent was able to provide. For example, all of his family members are surviving and are able to carryon business in Indonesia by relocating from Jakarta to Sulawesi, without any discriminatory or persecutory treatment other than the incident described by the respondent where his brother was hurt when someone wanted money from him. One would think that if there were a pattern and a practice of persecution against ethnic Chinese in Indonesia today, that other circumstances would be readily available for the respondent to report.

The Court must agree with the Department of Homeland Security that apparently the economic category the respondent belongs to, leaves him open to being approached and at the same time, mocked or derided for his ethnic status as essentially an expression of frustration and resentment. But I don't think this rises beyond discrimination into the realm of persecution.

With respect to the repulsive physical treatment the minor female respondent has described, it is unfortunately the kind of action that appears to exist in almost every country in the world toward young women. One need only read the portion of the Country Reports relating to women, and even in 2002 the protection of women against physical assaults are few and far between, such assaults are endemic. And whether in fact the young Chinese women in Indonesia are more likely to be accosted than any other young women, this Court really cannot say. Unfortunately, the Court cannot find a pattern and practice of persecution on this level either) ~though as stated previously, the Court finds the events that this young women had to experience to be reprehensible.

With respect to the religious claim, the respondents did not spend much time dwelling on them. Clearly, there are problems in Indonesia. The Reports show inter-religious disputes and in previous yeard Reports, I believe the 2001 Report that is in the respondent5materials, would reflect places where Christians have attacked Muslim places of worship as well as Muslims attacking Christian places of worship. Without a doubt, the Christians are in the minority, but it does not appear that they are solely victims. As the Court recognizes that there is widespread dissent and hostility, it is hard to bring

such general lawlessness and violence into the realm of focused persecution against these respondents.

No effort has been made to describe to what extent the religious commitment of the family is such that they worship openly or frequently. No evidence of their religion has been presented. Thus, with respect to any claim of future persecution for being Christian or Christian Chinese, the Court does not have an adequate factual base to make such a determination. From the record, it does appear that there is discrimination against Christians and the Chinese Christian would thus probably experience more discrimination than either someone who was simply Christian, or someone who was simply Chinese, but it does not appear to be so substantial that it would once again cross the line over into a persecutorial situation.

For all these reasons then, the Court would have to decline to grant either asylum or withholding, finding that the respondents have not been able to make out either past persecution or a well-founded fear of future persecution based upon race or religion.

With respect to the Convention Against Torture, the respondents have described a situation where they are concerned about the majority ethnic and religious entities of the country where they live. They are not citing concerns of being tortured by their government or by government sponsored entity. However, they have described the infrastructure of Indonesia as being controlled by ethnic Indonesians and if they were to make that claim, that because of the overwhelming control that the country's infrastructures have by that ethnic group, that they would be likely to be tortured, the Court would not be able to find a factual basis in the background

documents to support a contention that simply because they are Chinese Indonesian or Chinese Christian Indonesians, that they would more likely than not be tortured by their government. Thus, relief under the Convention Against Torture would also have to be denied.

Based on the foregoing then, the following is the order of this Court:

ORDER

IT IS HEREBY ORDERED that the applications for asylum, withholding of removal, and relief under Article 3 of the Convention Against Torture be denied.

IT IS FURTHER ORDERED that these respondents be removed to Indonesia. If the respondents fail to report for removal as required, then for a period of 10 years they would be ineligible for any form of relief involving adjustment of status, change of status, registry, voluntary departure or cancellation of removal.

Polly A. Webber
Immigration Judge

APPROVED AS TO CONTENT ONLY.
Dated: *6-20-03*